IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVN. APPLICATION NO.67 OF 1998

Shri Pandharinath Bapu Badekar .. ..Petitioner
Versus
State of Maharashtra and Ors. .. ..Respondents

Mr.M.D.Pokale for petitioner
Mr.Y.M.Nakhwa, APP for State

CORAM : S.C.DHARMADHIKARI,J.

DATE : 27TH NOVEMBER, 2006

P.C.:

1. This is an application filed by the original accused challenging that part of the order of the learned Trial Judge where, after acquitting him of the offence punishable under Section 379 of Penal Code, the Muddemal property, more particularly mentioned at clause 3 of the operative part of the order of the trial court, has not been returned to the applicant but to the original complainant Saibu Hira Javale.

2. The applicant being aggrieved by the aforesaid order and directions of the trial court preferred an

appeal being Criminal Appeal No.74 of 1995, which appeal also has been rejected by the learned 4th Addl. Sessions Judge, Satara.

3. Mr. Pokale, learned advocate appearing for the applicant-original accused submits that applicant is the owner of fallow land admeasuring 5 Hectors and 34 Rs bearing Gat No.261 of village Ahire, Tal. Khandala, Dist. Satara.

4. Mr. Pokale submits that even the complainant was claiming title to this land along with 20 others on the basis of joint possession. It is the case of the complainant that there are 100 trees of Karanj and other trees in the said land. The case of the complainant is that on 9th/10th September,1994 the applicant-accused came to his land and has cut 17 trees from the land. He did so without the consent of the owners. Subsequently, the cut trees/wood was sold by the applicant to one Sanjay Manohar Mahamuni (Respondent no.3 herein).

4. A complaint was therefore lodged by the original complainant, respondent no.2 to this revision application, at Khandala Police Station. C.R.No.113 of 1994 was

registered at his instance alleging offence punishable under Section 379 of Indian Penal Code. A charge-sheet was filed in the court of Judicial Magistrate, First Class, Khandala after completion of investigation. Charge was framed to which the applicant-accused pleaded not guilty. Learned JMFC tried the case (Reg. Criminal Case No.76 of 1994) and by his Judgment and order dated 31.8.1995 acquitted the applicant-accused. However, the learned Judge directed that the Muddemal property be returned to the original complainant.

5. As pointed out above, this order and direction was challenged in the criminal appeal which was also dismissed.

6. Mr. Pokale submits that the appellate court has held that the Muddemal property cannot be returned to the original complainant Saibu, as on the own showing of the original complainant, Muddemal property was sold to 3rd respondent Sanjay Mahamuni and therefore, complainant could not have been held entitled to this property. But at the same time the applicant-accused having failed to produce any material to show that he has right, title and interest therein at the most Muddemal property can be

claimed by Sanjay Mahamuni.

7. Mr. Pokale submits that in the above circumstances and when this revision application is pending from 1998 so also the order and direction of the court below is stayed, the applicant be held to be entitled to the Muddemal Property. He submits that the Muddemal property is still lying at the police station on account of interim stay granted in this revision application.

8. Further, Sanjay Mahamuni respondent no.3 has filed an affidavit in this court stating therein that he has no objection if the Muddemal property is returned to the applicant-accused. He does not claim any right, title and interest therein.

9. With the assistance of Shri Pokale, I have perused both orders. The trial court has held that the prosecution has failed to prove that the applicant-accused removed the wood from the field of complainant and thereafter sold it to P.W.-7 Sanjay Mahamuni. The trial court has in para 16 of the order specifically observed that one of the witness Bajirao Vishnu could not state

before the police the number of trees cut by the accused. However, complainant claimed that about 25 trees were cut down by the accused. Thus, over all oral evidence of the so called cutting of the trees is not supported by either the contents of the complaint or the independent evidence during the course of trial. The FIR was lodged after delay of six days. The so-called identification of the property is during the course of the proceedings before the trial court. That also is doubtful.

10. The lower appellate court while partly interfering with the direction of the trial court has referred to the deposition of parties and has observed that the evidence on record shows that the Muddemal trees were not seized from the possession or custody of the accused. The field also is not identified. The learned Addl. Sessions Judge, however, relied upon the testimony of P.W.7 Sanjay Mahamuni. The sale of wood to Sanjay Mahamuni, according to the learned Addl. Sessions Judge, would show that at the most Sanjay Mahamuni could claim the property. Thus, the learned Addl. Sessions Judge has not approved the order and directions of the trial court to return the property to the complainant Saibu. On the other hand, it is held by the Addl. Sessions Judge that none could prove

their right, title and interest but at the most Sanjay Mahamuni could be held to be entitled to the same.

11. In the peculiar facts and circumstances of this case and only in the light of the affidavit filed by Sanjay Mahamuni so also the absence of the complainant despite service I am allowing the revision application by setting aside the order and directions of the trial court. The Muddemal property be returned to the petitioner original accused but upon an undertaking that in case the original complainant Saibu Hira Javale proving his right, title and interest in the same the Muddemal property would be returned by him to the said Saibu. Neither he could claim any right, title and interest therein nor would the police be required to make good any loss sustained during course of the proceedings by Saibu. In other words, upon execution an Undertaking/Indemnity in the above terms the applicant shall be allowed to take away the Muddemal property.

12. The Revision application is allowed. Rule is made absolute in the above terms.

13. Needless to state that unless an

Undertaking/Indemnity is executed the Muddemal property shall not be returned to the applicant.

(S.C.Dharmadhikari, J.)